

EXPLANATORY MEMORANDUM TO
THE IDENTITY CARDS ACT 2006 (FEES) REGULATIONS 2009

2009 No. 2805

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 These Regulations introduce a fee of £30 for submitting an application to be entered in the National Identity Register and a fee of £30 for submitting an application for the issue of an ID card. It also provides exemptions from these fees in certain circumstances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Identity Cards Act 2006 (“the Act”) received Royal Assent on 30th of March 2006. This instrument, together with a further nine, will be the first set of orders and regulations made under the Act.

4.2 Alongside this instrument, a further five instruments subject to the affirmative resolution procedure are being laid before Parliament in May 2009. They are as follows:

- The Identity Cards Act 2006 (Application and Issue of ID Card and Notification of Changes) Regulations 2009, which prescribe various matters in relation to applications for entry on the National Identity Register, applications for an ID card and notification of changes and make provision in relation to place of residence.
- The Identity Cards Act 2006 (Prescribed Information) Regulations 2009, which prescribe information that must be recorded on an ID card or an identification card and other prescribed requirements and facts.
- The Identity Cards Act 2006 (Information and Code of Practice on Penalties) Order 2009, which prescribes organisations that may be required to provide information to verify information held on the National Identity Register or provided in an application to be entered on Register, as well as the public authorities that may be provided with information from the Register without the consent of the individual to whom the record relates. It also sets out an additional purpose for which a chief officer of the police may be provided with information from the Register and specifies when the Code of Practice on Civil Penalties comes into force.
- The Identity Cards Act 2006 (Provision of Information without Consent) Regulations 2009, which prescribe the Government departments which may be provided with information in connection

with specified functions, as well as who may be provided with information on behalf of those named on the face of the Act, as well as the conditions that must be met before information is provided.

- The Identity Cards Act 2006 (Designation) Order 2009, which designates “a criminal conviction certificate” that is applied for by airside workers meaning that certain airside workers will be required to apply for an ID card when they apply for such certificates.

4.3 In addition, four instruments subject to the negative resolution procedure will be laid before Parliament in June 2009 They are as follows:

- The Identity Cards Act 2006 (Entitlement to be Registered) Regulations 2009, which prescribe, in addition to those specified in section 2 of the Identity Cards Act, those people who are entitled to be registered on the National Identity Register.
- The National Identity Registration Number Regulations 2009, which specify the format with which the number must comply.
- The Identity Cards Act 2006 (Civil Penalties) Regulations 2009, which prescribe the manner in which a penalty notice would be issued and the way in which any objection to a penalty may be made.
- The Identity Cards Act 2006 (Provision of Information with Consent) Regulations 2009, which prescribe the way that consent may be given and the particulars that must be provided before any organisation can be approved as suitable for the provision of information with consent, as well as the conditions that must be met before information can be provided.

4.4 These instruments will enable the first phase of the National Identity Service to be implemented, which will involve a limited initial rollout to a numbers of volunteers from the general public and selected airside workers, starting with those at Manchester and London City airports.

4.5 The instruments relate only to provisions for those who are British citizens, British subjects with right of abode in the United Kingdom, EEA nationals or family members of EEA nationals from outside the EEA. There will be additional secondary legislation laid before Parliament in due course to extend the issue of biometric immigration documents (commonly known as identity cards for foreign nationals) under the UK Borders Act 2007. This will make similar provisions for airside workers who are subject to immigration control, also starting with those at Manchester and London City airports.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Ministry of Justice and Home Office, Shahid Malik MP has made the following statement regarding

Human Rights: “In my view the provisions of the Identity Cards Act 2006 (Fees) Regulations 2009 are compatible with the Convention rights.”

7. Policy background

7.1 The Act establishes a statutory framework for issuing fingerprint biometric ID cards together with the creation of a secure and reliable National Identity Register to hold the identity information about individuals in the United Kingdom. This is as part of what is now termed the National Identity Service and will lead eventually to a point at which anyone who is aged 16 or over and is resident in the United Kingdom may apply for an ID card.

7.2 The Act sets out the statutory purposes for the establishment of a National Identity Register and the issue of identity cards. In summary these are to provide a convenient method for individuals to prove their identity to anyone who reasonably requires proof and, at the same time, to provide a secure and reliable method for people to be identified wherever that is necessary in the public interest – that is:–

- in the interests of national security;
- for the prevention or detection of crime;
- for the enforcement of immigration controls or controls on illegal working;
- to secure the more efficient and effective delivery of public services.

7.3 The National Identity Scheme Delivery Plan 2008, published in March 2008 (see: <http://www.ips.gov.uk/identity/downloads/national-identity-scheme-delivery-2008.pdf>) set out the plans for introducing identity cards. This included the introduction of identity cards for foreign nationals which started from November 2008 under separate powers contained in the UK Borders Act 2007 (see: http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070030_en.pdf).

7.4 The Delivery Plan also made clear that the first identity cards issued to British citizens and European Economic Area nationals would be issued by the Home Office Identity and Passport Service under the Identity Cards Act 2006, starting in autumn 2009. These will initially be issued to critical workers at airports as well as to a limited number of volunteers, with a focus on young people from 2010. Finally, from 2012, identity cards will be issued in high volumes alongside passports with applicants being enrolled on the National Identity Register and being given the option of a passport or identity card or both documents.

7.5 On Page 21 of the Delivery Plan, it was indicated that the fee for an ID card would be £30 or less in 2009 and 2010. These regulations reflect that commitment. Regulation 2 introduces a £30 fee for an application to be entered in the National Identity Register and for an application for the issue of an ID card. However, these regulations also make a number of exemptions to these fees.

7.6 The first exemptions relate to applications by critical workers.

The Government intends to issue identity cards to such workers in a phased manner. In the first phase, Manchester and London City airports have agreed to work with the Home Office so that the first ID cards for critical workers will be issued to airside workers at those airports. In recognition of the efforts required from airport authorities, employers and staff at those airports in this initial phase, as well as the challenges currently facing the aviation industry, the Government has committed to waive application fees for these workers for an initial 18 month evaluation period. Regulation 3 reflects this by exempting them from the fee for applying to be entered in the National Identity Register for the first time or for the issue of their first or subsequent ID cards.

7.7 For those applicants who are not airside workers at Manchester or London City airports (i.e. volunteers from the general public), fees will still be payable with payments being accepted primarily by debit card and credit card but also by cash. However, there are also a number of exemptions to such fees.

7.8 Under Section 6(6)(a) of the Act, an application to be entered in the National Identity Register for the first time must be accompanied by an application for an individual's first ID card. In practice, only one common application process will be implemented which will serve both purposes, even though there are two distinct applications being made technically. To ensure that an individual is not required to pay the £30 fee twice when they apply for their first ID card therefore, regulation 4(a) introduces an exemption from the fee for an application for an ID card when it is accompanied by an application to be entered in the National Identity Register. Thus, the effect of this exemption is that an application to be entered in the National Identity Register and to obtain your first ID card will only cost £30, not £60.

7.9 Subsequent applications for a replacement ID card will cost £30. However, regulation 4(b) provides an exemption if the person is applying for a replacement card because their previous one was damaged when it was issued to the applicant or, following an examination of the card, their card has been deemed faulty as a result of a defect in the issuing or manufacturing process.

7.10 Finally, during the passage of the Identity Cards Act, the Government stated that there would be no fee imposed for changes to an individual's record on the National Identity Register where that information was not recorded on the ID card. Accordingly, no fee is imposed in these regulations for applications to make a modification to an individual's entry in the Register - fees only relate to applications for the issue of an updated ID card. Subject to Parliamentary approval of the information held on an ID card as part of the draft Identity Cards Act 2006 (Prescribed Information) Regulations, this means that changes of address, the most common anticipated change by volume, can be made free of charge as it is not recorded on the ID card. The report of a lost or stolen ID card will also be free of charge.

8. Consultation Outcome

8.1 A draft of these Regulations formed part of the 12 week consultation on draft secondary legislation under the Identity Cards Act which was contained in the document "Identity Cards Act Secondary Legislation – a Consultation", published on 21st November 2008. (see: http://www.ips.gov.uk/identity/downloads/NIS_Legislation.pdf).

8.2 The consultation paper suggested that the fee waiver for airside workers would be introduced by means of limiting the commencement order for these regulations to exclude such applicants. However, in response to the findings of the consultation, the waiver has been included on the face of the regulations instead.

8.3 A summary of the consultation has been published and placed on the Identity and Passport Service website (at <http://www.ips.gov.uk/identity/index.asp>).

9. Guidance

9.1 Guidance on fees and fee exemptions will be made available to customers of the Identity & Passport Service in the application pack that accompanies an application form for an identity card as well as being made available on the Identity and Passport Service website and general information leaflets.

10. Impact

10.1 An Impact Assessment has been published to cover the regulatory and other impacts of the secondary legislation currently proposed under the Identity Cards Act including this Order (at <http://www.ips.gov.uk/identity/index.asp>).

10.2 The Impact Assessment includes 3 separate sections – Costs and Benefits, Equality, and Other Reviews (including competition, small firms, legal aid, sustainable development, rural proofing and privacy).

- The Costs and Benefits assessment concludes that the introduction of identity cards and the roll out of the National Identity Service will return a net benefit of £6 billion over a 30 year period.
- The Equality assessment focuses on the impact on people who will be affected by the natal introductory phases of the National Identity Service in relation to race, gender, gender identity, religion or belief, sexual orientation and age.
- The Other Reviews concluded that there was little additional impact. The privacy review acknowledged concerns expressed and set out safeguards that are in place or will be put in place to address those concerns.

11. Regulating small business

11.1 As part of the impact assessment mentioned above, an initial small firms impact assessment was conducted. It found that in the initial rollout phases of the service, the small volumes of cards in circulation means that the overall impact on the small business community will be negligible and would primarily fall on small firms employing airside workers. An assessment conducted with employers at Manchester and London City found that there was minimal impact thanks to the fee waiver for the first 18 months for airside workers. The results underlined that small firms do not want the application process to be unduly bureaucratic or cause further delay but would welcome steps whereby the identity card was used as a means to streamline existing pre-employment checks.

12. Monitoring and review

12.1 After 2010, a new set of charges will be introduced for both the passport and the ID card as part of the National Identity Service, as customers will need to enrol their biometrics for either an ID card or a passport.

12.2 The first eighteen months of the scheme for airside workers will be treated as an evaluation period. At the end of this period, Government and industry will jointly evaluate the arrangements which have been put in place for identity cards to be issued to airside workers, consider the benefits which have been achieved in terms of both security and efficiency and develop a list of actions to improve the operation as it is extended nationally. The initial aviation industry partners – in particular Manchester Airport Group and London City Airport – will be amongst the participants in this evaluation. At this point, the fee waiver will be reviewed as part of this analysis.

13. Contact

13.1 Colin Foley at the Home Office, Identity and Passport Service, Tel:020 7035 8025 or email: colin.foley@ips.gsi.gov.uk can answer any queries regarding the instrument.